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IDAHO LEGISLATURE

SECOND REGULAR SESSION
SIXTY-FIRST LEGISLATURE

SEVENTEENTH LEGISLATIVE DAY
WEDNESDAY, JANUARY 25, 2012

Senate Chamber

President Little called the Senate to order at 11 a.m.

Roll call showed all members present except Senators Bair, Cameron, LeFavour, Pearce, and Tippets, absent and excused.

Prayer was offered by Chaplain Keith Buhler.

The Pledge of Allegiance was led by Chase Bower, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 24, 2012, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

January 25, 2012

The JUDICIARY AND RULES Committee reports that [S 1253](#), [S 1254](#), [S 1255](#), [S 1256](#), [SJR 103](#), and [SCR 111](#) have been correctly printed.

DARRINGTON, Chairman

[S 1253](#) and [S 1254](#) were referred to the Judiciary and Rules Committee.

[S 1255](#) was referred to the Health and Welfare Committee.

[S 1256](#) and [SJR 103](#) were referred to the Resources and Environment Committee.

[SCR 111](#) was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

Senators Bair and Tippets were recorded present at this order of business.

January 24, 2012

The EDUCATION Committee reports out [S 1237](#) with the recommendation that it do pass.

GOEDDE, Chairman

[S 1237](#) was filed for second reading.

January 24, 2012

The LOCAL GOVERNMENT AND TAXATION Committee reports out [H 355](#) with the recommendation that it do pass.

CORDER, Chairman

[H 355](#) was filed for second reading.

Senators LeFavour and Pearce were recorded present at this order of business.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

January 24, 2012

Dear Mr. President:

I transmit herewith [H 361](#), which has passed the House.

ALEXANDER, Chief Clerk

[H 361](#) was filed for first reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1257

BY FINANCE COMMITTEE

AN ACT

RELATING TO THE APPROPRIATION TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 2, CHAPTER 292, LAWS OF 2011, TO REVISE THE APPROPRIATION TO THE DEPARTMENT OF ADMINISTRATION FOR FISCAL YEAR 2012; AND DECLARING AN EMERGENCY.

S 1258

BY FINANCE COMMITTEE

AN ACT

RELATING TO THE APPROPRIATION TO THE IDAHO COMMISSION FOR LIBRARIES; AMENDING SECTION 1, CHAPTER 166, LAWS OF 2011, TO REVISE THE APPROPRIATION TO THE IDAHO COMMISSION FOR LIBRARIES FOR FISCAL YEAR 2012; AND DECLARING AN EMERGENCY.

S 1259

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO AGRICULTURE; AMENDING SECTION 22-3301, IDAHO CODE, TO REVISE A DECLARATION OF POLICY; AMENDING SECTION 22-3302, IDAHO CODE, TO PROVIDE THAT MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR, TO REMOVE AN ASSOCIATION DESCRIPTION AND TO PROVIDE THE NAME OF AN ASSOCIATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-3304, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-3305, IDAHO CODE, TO REMOVE ARCHAIC PROVISIONS, TO PROVIDE THAT THE EXECUTIVE COMMITTEE MAY REQUEST THE

REMOVAL OF A COMMISSIONER AND TO PROVIDE THAT UPON RECEIPT OF A REQUEST FOR REMOVAL OF A COMMISSIONER, THE GOVERNOR MAY WITHDRAW THE COMMISSIONER'S APPOINTMENT; AMENDING SECTION 22-3308, IDAHO CODE, TO PROVIDE THAT TWO OR MORE COMMISSION MEMBERS MAY MAKE A WRITTEN REQUEST FOR A MEETING; AMENDING SECTION 22-3309, IDAHO CODE, TO REMOVE REFERENCE TO THE IDAHO STATE WHEAT GROWERS' ASSOCIATION, TO AUTHORIZE THE CALLING OF REFERENDUMS AND TO PROVIDE REFERENCE TO SPECIFIC LAW RELATING TO INSPECTION OF BOOKS, RECORDS AND ACCOUNTS BY THE PUBLIC; AMENDING SECTION 22-3310, IDAHO CODE, TO PROVIDE FOR THE SOLICITATION OF GRANTS, DONATIONS AND GIFTS BY THE COMMISSION; AMENDING SECTION 22-3311, IDAHO CODE, TO PROVIDE THAT THE COMMISSION MAY REQUIRE THAT THE EXECUTIVE DIRECTOR OR ANY AGENT OR EMPLOYEE APPOINTED BY THE COMMISSION BE BONDED; AMENDING SECTION 22-3312, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO CERTAIN DUTIES OF THE EXECUTIVE DIRECTOR; REPEALING SECTION 22-3313, IDAHO CODE, RELATING TO ESTABLISHMENT OF THE EXECUTIVE DIRECTOR'S OFFICE; AMENDING SECTION 22-3315, IDAHO CODE, TO REVISE AN EFFECTIVE DATE AND TO REVISE PROVISIONS RELATING TO THE MAXIMUM TAX PER BUSHEL ON CERTAIN WHEAT; AND AMENDING SECTION 22-3318, IDAHO CODE, TO REMOVE REFERENCE TO A SPECIFIC FUND, TO PROVIDE FOR THE PAYMENT OF FINES INTO CERTAIN ACCOUNTS OF THE COMMISSION AND TO MAKE TECHNICAL CORRECTIONS.

S 1260

BY HEALTH AND WELFARE COMMITTEE AN ACT

RELATING TO NURSES; AMENDING SECTION 54-1404, IDAHO CODE, TO GRANT THE BOARD OF NURSING THE AUTHORITY TO ESTABLISH ALTERNATIVES TO FORMAL DISCIPLINARY ACTION AND TO MAKE TECHNICAL CORRECTIONS.

S 1261

BY HEALTH AND WELFARE COMMITTEE AN ACT

RELATING TO NURSES; AMENDING SECTION 54-1404, IDAHO CODE, TO PROVIDE THAT THE BOARD OF NURSING SHALL HAVE THE POWER AND DUTY TO EVALUATE AND DEVELOP, OR TO ENTER INTO CONTRACTS OR AGREEMENTS WITH OTHERS TO EVALUATE AND DEVELOP, THE EDUCATION, DISTRIBUTION AND AVAILABILITY OF THE NURSING WORKFORCE FOR THE PURPOSE OF IMPROVING THE DELIVERY OF QUALITY HEALTH CARE AND TO MAKE A TECHNICAL CORRECTION.

S 1262

BY HEALTH AND WELFARE COMMITTEE AN ACT

RELATING TO NURSING; AMENDING SECTION 54-1406A, IDAHO CODE, TO REQUIRE THAT ALL APPLICANTS FOR ORIGINAL CERTIFICATION OR CERTIFICATION REINSTATEMENT AS A CERTIFIED MEDICATION ASSISTANT SUBMIT TO A FINGERPRINT-BASED

CRIMINAL HISTORY CHECK AND TO PROVIDE REQUIREMENTS RELATING TO SUCH CRIMINAL HISTORY CHECK.

[S 1257](#), [S 1258](#), [S 1259](#), [S 1260](#), [S 1261](#), and [S 1262](#) were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

[H 361](#), by Revenue and Taxation Committee, was introduced, read the first time at length, and referred to the Local Government and Taxation Committee.

Senator Cameron was recorded present at this order of business.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Davis, granted by unanimous consent, Senate bill [S 1224](#) was placed at the head of the Third Reading Calendar, followed by Senate bill [S 1223](#).

[S 1224](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Goedde arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McGee, Malloy (McKague), McKenzie, Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser, Stennett, Tippetts, Toryanski, Vick, Werk, Winder. Total - 35.

Whereupon the President declared [S 1224](#) passed, title was approved, and the bill ordered transmitted to the House.

[S 1223](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Goedde arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McGee, Malloy (McKague), McKenzie, Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser, Stennett, Tippetts, Toryanski, Vick, Werk, Winder. Total - 35.

Whereupon the President declared [S 1223](#) passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Tenth Order of Business.

Motions and Resolutions

On request by Senator Davis, granted by unanimous consent, President Little appointed a committee consisting of Senator Lodge, Chairman, and Senators Johnson and LeFavour to escort Chief Justice Roger S. Burdick into the Senate Chamber where he delivered the following **State of the Judiciary Address**:

Mr. President, Mr. President Pro Tem and distinguished members of the Idaho Senate, my colleagues on the Supreme Court and Court of Appeals and fellow Idahoans.

I would first like to thank the Supreme Court Justices for electing me Chief Justice and giving me an opportunity to address this body. Don't worry; I'll get even with them later.

The last time I stood at the podium in these chambers was in 1965 when I was in Boys State I ran for Governor and lost. It took me a change to the judicial branch and 45 years, until 2010, to win a hotly contested election and here I am.

Since becoming Chief Justice I have traveled to each of the judicial districts and met with judges, county clerks, commissioners as well as sheriffs and others throughout the state. I would like to share my observations with you about the State of the Judiciary.

Partnerships are being established to implement efficiencies and meet citizens' changing needs at every level. This creativity has led to remarkable success in meeting the judiciary's mission of equal access to the timely, impartial and fair resolution of cases. I am struck by the commitment, compassion and competence of Idaho's trial judges and county officials in developing local solutions to unique problems despite severe fiscal restraints.

Let me share some of these accomplishments, emphasizing that without the cooperation of all three branches of state government and the counties' support and resources; it doesn't get done.

Idaho's judiciary has been working with the Legislature and the counties to craft a county-based statewide misdemeanor probation system. We now have 32 officers who have graduated from POST Academy with 21 now enrolled. The court's goal is that all officers will be certified by January, 2014. By monitoring misdemeanor offenders, we protect our citizens as well as save incarceration costs.

Kootenai County has opened their Juvenile Justice Center, with one courtroom dedicated to juvenile justice cases and child protection matters and another for felonies. A child-friendly waiting room has been opened to give a safe and peaceful waiting area for the children involved in child protection cases. Canyon County has also built a children's room for the same purpose.

We thank Justice Dan Eismann for his many accomplishments while Chief Justice, but his most beloved legacy came to fruition last year.

Idaho's first Veteran's Court was started in Ada County in March, 2011.

These courts have a special camaraderie based upon the "Warrior Ethos." It is embodied in the Soldier's Creed which reads in part:

I will always place the mission first.

I will never accept defeat.

I will never quit.

I will never leave a fallen comrade.

Words for all to live by; but they carry a special meaning to our veterans. By hearing from their own, and relying on shared experiences, the rehabilitation message gains credibility and helps to turn lives around. Two additional veterans courts will be starting in Canyon and Bannock counties. We owe it to our veterans to help them lead productive lives, as part of our national debt of gratitude.

Domestic Violence courts now exist in seven counties and supervised almost 1600 offenders in 2011. The Domestic Violence court could be our most complex problem solving court. The model starts with a judge who is cross-trained to handle all matters relating to a single family. A Domestic Violence Court team provides treatment which teaches positive, responsible behavior. The mix of court monitoring, counseling, treatment and education focuses on improving behavioral skills free of violence and promoting healthy relationships.

Although new to these courts, Idaho's judiciary is already a national leader. After a presentation by Idaho judges to a national conference, representatives from New York and Minnesota will be arriving shortly to observe our system.

Last year, Idaho's 59 problem solving courts supervised almost 2,250 felony, misdemeanor and juvenile offenders. 594 offenders graduated from our drug and mental health courts. Thank you for entrusting us with last year's substance abuse treatment appropriation for use in our problem solving courts. Research continues to show recidivism rates for graduates are lower than other alternatives for rehabilitation and sentencing.

Idaho's Child Protection Drug courts are another innovative approach to keep families together and to nurture and protect children. These courts address the parent's drug use while marshaling services to change family dynamics, thus saving the family unit. Because parenting skills are taught to us by our parents, these courts will influence not only the participating parents, but generations to come.

I would like to recognize the retirement of our statewide Drug Court coordinator, Norma Jaeger. She is a moving force not only in Child Protection Drug Courts but problem solving courts throughout the state. We will miss her non-stop energy, her warming smile and her ability to move people in the right direction. She starts a new chapter in her life and we thank her.

Speaking of new starts - Idaho's drug and mental health courts helped 20 babies to be born to clean and sober mothers, bringing the total to 248 drug-free births since the beginning of Idaho's problem solving courts. There can be no greater legacy than having these kids start out in a sober, safe home with parents who will teach them the rewards of sobriety and accountability.

We are not just focused on youth; we are energizing the entire system of guardianships and conservatorships to help our aged and disabled citizens achieve their potential. Working with judges and county clerks statewide, over \$212 million dollars are being managed by conservators and reviewed by existing trained court staff.

I know it goes without saying, but all of the district and magistrate judges who preside over problem solving courts do so in addition to a full case load and without further benefit; other than the life-changing expressions of hope on the faces of the participants.

The Snake River Basin Adjudication started in 1987 has progressed at unprecedented speed for an adjudication and as a result spread its procedural model throughout the nation. I can happily report that fewer than 1900 claims are left to be adjudicated, having already completed over 150,000 claims. Under the leadership of District Judge Eric Wildman, we are now starting to draft the final decree for the Snake River Basin's water resources. We thank past presiding District Judges Hurlbutt, Wood, Melanson and now Wildman for shepherding Idaho's most complex civil case to its end.

All judges in Idaho's courts have seen a substantial increase in certain types of cases. Since 2006, there has been a 30% increase in district court civil cases—including complex civil, medical and business disputes that often take years to resolve. Divorce and child custody cases have risen by 10%. With the decline in availability of mental health treatment, we have seen an astounding 151% increase in mental health commitment proceedings. These trends—likely the direct result of the economic decline—are a reflection of the heightened stress levels that Idahoans, businesses and families are experiencing in this economy.

The challenge then is how to meet this upward trend with static resources.

"Courts of justice shall be open to every person and a speedy remedy afforded to every injury"

These are not my words, but those of Article I, Section 18 in Idaho's Constitution. They are unchanged from 1889 and we are re-pledging ourselves to their spirit by our Advancing Justice Initiative. Senior Judge Barry Wood, working with national and local groups, is making a critical examination of all court case types to find unnecessary delay, developing new procedures and creating new expectations to minimize that delay. This is not speed for speed's sake. It is a search for efficiencies while preserving quality.

On the technology front we continue our march to "e-everything"; e-citations by law enforcement, e-payment of fines, fees and court costs by the public, and now plans for e-filing of court documents and paperless courthouses. These efforts meld seamlessly into our Advancing Justice Initiative.

An increasing part of Idaho's judicial caseload involves persons representing themselves. Our court assistance offices responded to over 60,000 requests in 2011; an 11% increase over 2010, an increase of 64% in five years. In addition to our "on the ground" court assistance offices, we will be launching a new revised self-help center website.

For many years Justice Jim Jones has provided exemplary leadership to the cause of unrepresented litigants in Idaho. Through his efforts and the Idaho Pro Bono Commission, lawyers are now encouraged to provide a minimum of fifty hours of pro bono legal service annually. He has fostered changes to the Idaho Civil Rules to make it easier for lawyers to provide pro bono assistance on a limited issue. He has worked tirelessly with Idaho Legal Aid and the State Bar to help explore funding alternatives. Some of these proposals will come to you in this session.

Even with the work of this Court, the State Bar and Idaho Law Foundation, we know there is further need. We support and encourage the Idaho Legislature to continue to explore funding for legal representation in civil cases for the many Idahoans who cannot afford legal services.

We also commend the work of the Criminal Justice Commission, which in addition to other important work, is developing recommendations to improve criminal public defender services throughout the State.

Idaho's judiciary decides our citizens' most important personal and business problems, ranging from the care and custody of our children to the most byzantine of business relationships. For this constitutional requirement, we need our most experienced and scholarly lawyers to become judges.

Since July 2000, Governors Kempthorne, Risch and Otter have been given the full slate of four candidates to fill district judge positions only 26% of the time. Our magistrate judge openings during the same time period have had an ample list of qualified applicants. A more competitive compensation package is required to insure the third branch of government attracts highly qualified individuals for district judge and other positions. Idaho's trial judges have not had an increase in their compensation since July, 2008; we rank 47th lowest in the nation.

The Judge's Retirement Fund is the other significant part of the overall compensation package. By any estimation this fund is at or above the national performance standard for governmental pension funds. The Court has conferred with legislators, state pension experts, and PERSI's actuary to explore ways to strengthen the fund for the future. We hope reasonable consensus will be reached this session on ways to do so.

I will conclude my remarks by saying the state of the Judiciary is straining under increased caseloads, expanded duties, scarce resources and stagnant compensation. We must begin a conversation with the Legislature, the Governor and county clerks and commissioners about how best to address the pent up demand for judges, court facilities and new resources needed to conduct safe, timely hearings on the vital issues facing everyday Idaho citizens.

These conversations will present new challenges for the future, but I'm convinced with the continued support of the Idaho Legislature, the Governor and county officials we will solve them and present an even stronger judiciary to you next year and the years thereafter.

Thank you and God Bless.

The President thanked Chief Justice Burdick for his remarks and Senator Lodge, Chairman, and Senators Johnson and LeFavour escorted Chief Justice Burdick from the Chamber, and the Committee was discharged.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Malepeai, by voice vote, the Senate adjourned at 11:50 a.m. until the hour of 11:15 a.m., Thursday, January 26, 2012.

BRAD LITTLE, President

Attest: JENNIFER NOVAK, Secretary